

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

3M Company,)	File No. 20-cv-1314
)	(SRN/BRT)
Plaintiff,)	
)	
vs.)	Saint Paul, Minnesota
)	June 25, 2020
Matthew Starsiak and AMK)	3:30 p.m.
Energy Services, LLC, et al,)	
)	AT&T Conference Bridge
)	
Defendants.)	

BEFORE THE HONORABLE SUSAN RICHARD NELSON
UNITED STATES DISTRICT COURT JUDGE
(MOTIONS HEARING)

APPEARANCES

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P R O C E E D I N G S

ALL PARTIES APPEARING REMOTELY VIA TELECONFERENCE

THE COURT: Good afternoon, counsel. Can you hear me?

MR. URSU: We can. Thank you, Your Honor.

THE COURT: Very good. Well, we will begin. We do have a court reporter. This is the matter of 3M Company versus Matthew Starsiak, AMK Energy Services, LLC. This is court file number 20-1314. Could counsel please note your appearances for the record.

MR. URSU: Certainly. For 3M Company this is John Ursu from Faegre Drinker Biddle & Reath, and with me are Isaac Hall and Michael Sawers, also from Faegre.

THE COURT: Good afternoon.

And who do we have from the defense?

MR. SCHUPP: Good afternoon, Your Honor. This is Tim Schupp and Rob Vaccaro on behalf of Mr. Starsiak and on behalf of AMK.

THE COURT: Very good. We are here today to consider 3M's motion for temporary restraining order. Mr. Ursu, do you wish to be heard?

MR. URSU: Yes. Thank you, Your Honor.

THE COURT: You may proceed.

MR. URSU: 3M has filed, as the Court may be

1 aware, a number of these cases around the country and it is
2 hard to imagine a stronger case for preliminary relief. As
3 the Court is well aware, we're in the middle of a national
4 health crisis and 3M is one of a very few number of N95
5 manufacturers. These are vital, life-saving respirators
6 that can be used by healthcare workers and other frontline
7 professionals in order for them to keep doing their jobs and
8 help keep the rest of us safe. There are a very limited
9 number of these available and there is enormous desperation
10 in the marketplace for exactly what the 3M stands for, which
11 is for trust, reliability and quality.

12 And these attributes make a difference of life and
13 death for healthcare workers and others who are relying on
14 them, and unfortunately gray marketeers like Mr. Starsiak
15 and AMK have leapt into the gap to line their own pockets,
16 and that's -- stopping that conduct is what this case is
17 about.

18 3M is working with federal law enforcement and
19 where there's a claim of false affiliation with 3M, we are
20 filing suit. There have been cases that have been filed by
21 3M in New York, in Florida, in Indiana, in California, in
22 Canada. There are at least 14 that are pending around North
23 America.

24 And this is the very first case that 3M filed in
25 Minnesota and it was filed in Minnesota for a particular

1 reason, which is that defendants lied their way into the 3M
2 legal department and then used the names of the 3M lawyers
3 they found there as part of perpetrating their fraud. They
4 infringed our trademarks. When they were doing that, they
5 claimed a false affiliation. And as part of demonstrating
6 their fraudulent intent, we have transcripts of --
7 transcripts of one phone call, at least, where defendants
8 are saying that they were -- got into the PPE business
9 because 3M needed government contractors like them to vet
10 buyers and that they were in regular contact with Ivan Fong
11 here in Minnesota, and none of that is true.

12 That fraud is part and parcel, of course, with the
13 contacts here and that's why this case is in Minnesota. I
14 want to be clear that we did investigate filing in other
15 locations. We first looked at filing in New York City,
16 which is where defendants claim to have their headquarters,
17 but it turned out that that headquarters was fictitious. It
18 doesn't exist.

19 We then looked on the AMK website and with their
20 filings with the government where they claim to have 80
21 locations around the country, 150 locations around the
22 globe, and we could not find those locations anywhere. All
23 we could find was a one-and-a-half-story house in Bountiful,
24 Utah. So we filed suit in Minnesota because that's one
25 thing we know about. That's where we were when they lied to

1 us. And this case is, I think, a perfectly appropriate case
2 for the exercise of personal jurisdiction. Their contacts
3 with Minnesota are part and parcel of the fraud.

4 There's no question here, I think, that the
5 prerequisites for preliminary relief are met. It satisfies
6 the Eighth Circuit's test for personal jurisdiction and it's
7 not a close case. These are intentional acts. It's plain
8 that Mr. Starsiak and his agents reached out to Minnesota,
9 reached out to a Minnesota company and reached out to
10 Minnesota residents, to try and convince them to provide him
11 with respirators out of sequence.

12 He had -- was in possession, as of May 1st, of a
13 Letter of Intent to purchase 1 billion 3M N95 respirators.
14 That's almost 3M's entire supply of respirators that it can
15 produce in one year, and he had promised access to 3M. They
16 spent --

17 THE COURT: Mr. Ursu, can I just interrupt you for
18 a moment?

19 MR. URSU: Yes.

20 THE COURT: I'm sorry. It's awkward on the phone
21 to interrupt and I hate to do that, but there certainly is a
22 basis under the law for specific personal jurisdiction where
23 there is purposeful fraud on the state. I suspect that when
24 we hear from the defense they will argue that the question
25 is not one of contact with the plaintiff or the plaintiff's

1 employees or counsel but rather with the state.

2 Could you cite to me -- and I know that their
3 motion just came in I believe yesterday and this is all very
4 last minute -- but are you aware of Eighth Circuit authority
5 that would support the exercise of specific personal
6 jurisdiction in a case like this where there's been an
7 allegation of an intentional fraud?

8 MR. URSU: Yes. So I would cite you to the
9 *St. Jude Medical versus Lifecare International* case. This
10 was in the reply brief that we just filed. That's at 250
11 F.3d 587, and the pincite is 592. And this relates to
12 conduct that is not random, fortuitous or attenuated. These
13 are not blast e-mails. This is not access to a website, but
14 rather the purposeful connection that should have put
15 defendants on notice that they would be hailed into court in
16 Minnesota.

17 I think that *Calder*, the Supreme Court authority
18 on this point, too, which is from 1984, is actually also
19 very close to being on point. That was a defamation case.
20 In that case the misconduct was directed towards California
21 and the defamatory remarks themselves were -- involved
22 California and conduct within California. It's almost
23 identical to what we have here. Not only did they come in,
24 harvest the identities of Ivan Fong and Haley Schaffer, but
25 were then going and lying about their access to 3M to others

1 based on those communications.

2 And so Minnesota is really the central focus of
3 the fraud and their ability to conduct it. Without those
4 contacts, the fraud would have looked very different than it
5 ultimately was.

6 THE COURT: Thank you.

7 MR. URSU: Certainly. In this district, courts
8 have looked at whether defendants' acts were intentional,
9 whether they were uniquely or expressly aimed at the forum
10 state, and whether the harm suffered was suffered here.
11 These are all things that would be met in this case.

12 Again, these are not accidental or incidental
13 contacts with Minnesota or Minnesota residents or a
14 Minnesota company, and they were also directed here in a way
15 that is specific. They were directed to specific
16 individuals who have submitted declarations stating they are
17 Minnesota residents and at a company with its principal
18 place of business in Minnesota. And under generally
19 applicable trademark law, that harm is suffered at the
20 principal place of the business of the trademark holder, and
21 of course that would be in Minnesota in Maplewood.

22 So I think the Eighth Circuit test for personal
23 jurisdiction is met here on the face of the affidavits that
24 have been provided and there's no contrary evidence that's
25 been submitted.

1 I think moving on from personal jurisdiction, if
2 the Court does not have further questions on that, I do not
3 hear, at least with respect to this temporary restraining
4 order, a serious contest on the other prerequisites for
5 preliminary relief. Plainly, 3M is likely to succeed on the
6 merits and there's no contest with respect to the various
7 *SquirtCo* factors that the Eighth Circuit has relied on.
8 These are -- this is the 3M wordmark. This is the 3M
9 trademark. And when they use 3M in that context to claim
10 that they are 3M distributors and they are not, when they
11 claim that they are 3M sales team and they are not, that
12 under those circumstances plainly that creates a likelihood
13 of confusion and a false affiliation with 3M and that
14 violates the Lanham Act.

15 These were -- includes -- it doesn't -- I think
16 the focus for defendants' contest on this point has been
17 that the fraud actually didn't succeed. That despite the
18 many efforts that we've put forward in the declaration here,
19 that they actually did not close transactions. It's
20 interesting to hear that given that the conversation that
21 one of the targets of their fraud recorded, an AMK's
22 operation chief is badgering the other party, the declarant
23 said he was being bullied on the phone call itself by
24 saying, you know, asking him again and again, Have you
25 closed transactions? Have you closed transactions?

1 Well, now they claim that they haven't, but that's
2 not the test. The test under the Eighth Circuit factors of
3 course includes offering for sale and that's part of what
4 trademark is; and there's no doubt in this case that it did
5 confuse the public and that its intent was to confuse the
6 public.

7 Bad faith has been a driver of a great many of the
8 trademark cases. I think there was a survey that said where
9 bad faith is found, and the other factors, there's
10 reasonable showing on the other factors that it -- in almost
11 every case there's found to be infringement. There's no
12 question here, I think, that this is fraud. It's -- the
13 intent here was to confuse.

14 Many courts have found a presumption of
15 irreparable harm. We don't need to even rely on that
16 presumption here because, of course, the Southern District
17 of New York and the Southern District of Indiana have all
18 issued preliminary injunctions in this context finding that
19 there's irreparable harm and finding that the particulars of
20 this health crisis in particular make it vital that people
21 be able to trust the information that they receive. Buyers
22 are not ordinary buyers in the regular stream of commerce.
23 They are, you know, in many cases either state officials or
24 hospitals that are desperately trying to find much needed
25 life-saving equipment so that they can keep doing their jobs

1 and so that they can tend to the people who are in fact ill.
2 It's not an ordinary lying environment and in those types of
3 circumstances irreparable harm is a real thing.

4 I just took a deposition in another case of
5 someone who was confused by this kind of gray market conduct
6 and he said based on what he saw, the marketplace resembled
7 something like cocaine dealers might do. Obviously, those
8 kind of mis-affiliations with 3M are highly damaging and
9 highly damaging in this context in particular.

10 The public interest is likewise satisfied and, as
11 courts have found, procurement officials being able to trust
12 the information that they receive, making sure that it's
13 genuine and making sure that there are legitimate offers at
14 the end of these -- these buying chains is in fact part of
15 the public interest, and protecting that not only protects
16 3M but protects lives out there in the world where people
17 need these N95 respirators.

18 And so I think the preliminary relief factors are
19 all met here. This is not a close case. There have been
20 many of these filed around the country. There was one where
21 the court did deny it and it has nothing to do with the kind
22 of conduct here. I was surprised to see in defendants'
23 papers their discussion of this as somehow being a singular
24 incident, a singular e-mail or otherwise. It's just not.
25 And if defendants have told their counsel that, they are not

1 being truthful. All you need to do is look at the
2 declarations in this case, the e-mails, the many, many, many
3 parties that Mr. Starsiak himself is name checking out
4 there; the way that the AMK operations chief, according to
5 Matthew Hise's declaration, is jumping in and out of phone
6 calls because of all these balls they have in the air.

7 You know, in the end, 3M was prompted to file suit
8 immediately given a contact that Mr. Starsiak had on June
9 4th, and we submitted a supplemental declaration to that
10 effect that shows where he once again was saying things that
11 were not true, where he was being corrected by other people
12 on the lines and where they were thanking him for passing
13 along information, further information about 3M counsel.
14 That's identity theft. It's not okay and that's why 3M
15 filed suit when it did.

16 If the Court has any further questions, I will be
17 happy to entertain them, but until then I'll just note that
18 our hope is that the Court will enter this temporary
19 restraining order and that we can then put something on the
20 docket for 14 days hence so that we can have a preliminary
21 injunction hearing.

22 THE COURT: Very good. Thank you, Mr. Ursu.

23 Mr. Schupp or Mr. Vaccaro.

24 MR. SCHUPP: Thank you, Your Honor. It's Tim
25 Schupp.

1 I'd like to start first, obviously you're aware
2 that we filed a motion to dismiss based on personal
3 jurisdiction yesterday because you mentioned it, and if I
4 could just address that briefly first.

5 I think as a preliminary issue, the Court needs to
6 address the jurisdictional issue before proceeding with
7 anything relating to a temporary restraining order or an
8 injunctive relief that 3M has requested. We submitted our
9 brief yesterday and I'd just like to comment briefly on the
10 *Calder* case which 3M cited and said that the Court would
11 have jurisdiction under the doctrine in the *Calder* case, and
12 I actually think that the Eighth Circuit authority is to the
13 contrary.

14 You were quite right when you commented earlier to
15 Mr. Ursu that the issue is contacts with the forum itself,
16 not with representatives or individuals who are within the
17 forum, but it must be contacts with the forum state itself.

18 And I guess I'd like to start with the *Paisley*
19 *Park Enterprises* case that 3M cited. That was a decision by
20 Judge Wright from February of 2019, *Paisley Park Enterprises*
21 *versus Boxill*, and Judge Wright noted that the Eighth
22 Circuit, on page 878 of that case, that the Eighth Circuit
23 has acknowledged the limited reach of *Calder*.

24 So the beginning point I think in the analysis is
25 to understand that *Calder* is very narrow and has limited

1 reach and does not have the broad application that 3M urges.
2 And Judge Wright cited a couple of Eighth Circuit cases.
3 The first one on page 879, Judge Wright said: Instead,
4 personal jurisdiction under *Calder* is appropriate when a
5 defendant purposefully targets the forum state such as by
6 directly selling an infringing product to retailers or
7 customers in that state. Of course we don't have that here.
8 All we have is a couple of telephone calls and some e-mails
9 sent to 3M.

10 And she cited *Dakota Industries, Incorporated*
11 *versus Dakota Sportswear, Inc.*, 946 F.2d 1384, and then
12 there's a parenthetical in that case, saying that:
13 Affirming exercise of personal jurisdiction over
14 out-of-state company because company was aware of competing
15 trademark yet still used its infringing trademark when
16 selling to retailers and customers in the forum state.

17 So I think that's pretty clear that the Eighth
18 Circuit requires some form of tortious conduct directed in
19 the forum state and not with individuals in the forum state,
20 and that's what 3M has here.

21 I think Mr. Ursu mistook our arguments and perhaps
22 we weren't clear enough. We're not saying that there was
23 just a single e-mail. What we're saying is there was just a
24 single customer that they alleged that we tried to sell to,
25 which was Star Brands, Inc. Now, there apparently were

1 multiple contacts with Star Brands, Inc., but it was only
2 one company -- and they are in New York, by the way -- they
3 only cite to one company where they were trying to sell to
4 them, and not as a 3M distributor as Mr. Ursu says.

5 And in fact if you look at the transcript they
6 attached, it doesn't say what they claim it says. He says
7 that they -- Mr. Starsiak claimed he was a 3M distributor,
8 but that's not what it says. It says that Starsiak and AMK
9 worked with various distributors who were 3M distributors.
10 They didn't claim that they were those.

11 Now, I can see that Mr. Hise in his affidavit says
12 he was told that, but what Mr. Hise says in his affidavit
13 conflicts with the transcript of their phone call, so I
14 don't know what to make of that conflict and the evidence
15 that they've submitted. And I don't know that saying that
16 you work with 3M distributors in any way is a misuse of a
17 trademark. It simply isn't.

18 So in any event, we're not saying it's a single
19 e-mail. We're saying that they have only identified one
20 attempt to sell respirators that they claim that's at issue.
21 And we went down -- and they had referenced that Florida
22 case in their footnote -- and we went down and got a
23 transcript of the hearing and attached it to our opposition
24 to the motion for temporary restraining order, and that case
25 down there was actually quite similar in that there was only

1 one attempt to sell to one customer.

2 And the district court judge down in Tallahassee,
3 I believe, said that there was no evidence of any ongoing
4 harm or irreparable harm sufficient to justify a TRO. He
5 said based on a single transaction, that it just didn't
6 warrant a temporary restraining order. And we've submitted
7 Mr. Starsiak's affidavit that says they are not engaging in
8 any attempts to broker any sales and he doesn't intend to do
9 so in the future. So, you know, other than the single Star
10 Brands customer, there isn't any evidence of any other
11 activity.

12 And I will note that Star Brands said they thought
13 something was fishy and contacted 3M about it, so I don't
14 know what the confusion was. Although Mr. Hise says in his
15 declaration he was confused, he certainly didn't bear out in
16 his conduct when he filed some documentation with 3M and
17 also signed the affidavit with them.

18 With respect to our opposition to the motion, as
19 we -- motion for TRO, as we said in our papers, that given
20 the fact that we only had two days' notice, we weren't able
21 to fully and appropriately respond to the voluminous
22 filings. They had five or six affidavits, a bunch of
23 exhibits, a 26-page brief, and I thought we were pretty
24 clear that we just didn't have the time to respond to
25 everything; and now 3M is claiming that due to the time

1 constraint, anything we didn't respond to is now some kind
2 of admission, which we would respectfully dispute and assure
3 the Court that we're not conceding anything by not
4 addressing it. It was simply a question of time and
5 function.

6 They didn't serve it with their summons and
7 complaint a couple of weeks ago, but they certainly could
8 have done that and we could have had additional time to
9 prepare for this, and instead we have a two-day notice and
10 some emergency hearing. And I don't know why there's any
11 crisis now that didn't exist at the time they served the
12 summons and complaint, and here we are approaching July. So
13 I don't think there's any exigent circumstances that
14 requires a temporary restraining order.

15 Mr. Ursu also made the comment that Mr. Starsiak
16 is lining his pockets. That's a little bold because they
17 don't have any evidence, and Mr. Starsiak asserts that he
18 hasn't sold a single 3M mask to anybody. So I don't know
19 how he's, quote, unquote, lining his pockets, and I think
20 that's really kind of a gross exaggeration of the record
21 they have here to suggest that that's really what's going on
22 because they don't have any evidence that that in fact is
23 going on in this particular instance.

24 What else am I overlooking, Rob?

25 Okay. Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Schupp.

2 Mr. Ursu.

3 (Pause in proceedings.)

4 THE COURT: Mr. Ursu, you might be on mute.

5 MR. URSU: I am -- I was on mute and you can
6 just -- I think we can all stipulate that the things I said
7 when I was on mute was magical and very persuasive. I'll
8 start again.

9 MR. SCHUPP: There is no need to repeat them,
10 John.

11 MR. URSU: Right. There you go, Mr. Schupp.

12 So the Eighth Circuit -- I think Mr. Schupp had
13 mentioned the Eighth Circuit's interpretation of *Calder* and
14 it's set forth in another case that I'll call to your
15 attention, which would be *Hicklin Engineering versus Aidco*,
16 and that's at 959 F.2d 738, and that that may have an effect
17 on a competitor and that effect alone is not going to be
18 sufficient to bestow personal jurisdiction.

19 3M is a trademark holder. It is in this forum
20 state and there is no question that the effect of this
21 conduct harms 3M here in the forum state, but that is not
22 what 3M is relying on alone to establish personal
23 jurisdiction here. It's effects plus, and the plus conduct
24 here is not just purposeful availment; not just, you know,
25 selling to customers here in this state, but actually going

1 in trying to do business activities with 3M here in the
2 state and then using the results of that to go out and try
3 to defraud others. So I think that the effects plus
4 standard that we have here in the Eighth Circuit is plainly
5 satisfied.

6 You know, if I were to go through a long list of
7 the different entities that Mr. Starsiak was engaged with in
8 trying to sell N95 respirators or broker N95 respirators
9 over the course of this month, the ones that we know about
10 involve -- what he said were someone named Billy K, the John
11 Paul Mitchell Foundation. He claimed to be involved with
12 the Gates Foundation. He claimed to be involved with Elon
13 Musk. He claimed to be involved with Richard Branson.
14 There was a V.A. Hospital in Texas he claimed to be involved
15 with. We have this GreenNet Group that had the letter of
16 intent that was circulated to Dentons. We have Star Brands
17 Group and we have an affidavit here from Mr. Hise that says
18 that they were jumping on and off calls all the time talking
19 about how urgent and busy they were, or at least
20 demonstrating how urgent and busy they were.

21 And in the supplemental declaration of Haley
22 Schaffer that we just filed, you will see the last
23 communication that we received from him that prompted this
24 suit immediately on June 4th in which he's talking about
25 other transactions involving other people.

1 The fact is that this has not been -- he has not
2 demonstrated himself to be an honest person through the
3 course of these transactions. There's an enormous amount of
4 activity here and absent a court order, we have no reason to
5 believe that it's going to stop.

6 I believe that in the end, that the courts that
7 have entered preliminary injunctions and entered temporary
8 restraining orders in these contexts have been right and
9 they have done so on much less intense facts. Mr. Starsiak
10 says this happened over a short period of time. That's the
11 world that the buyers were living in, too. That's the world
12 that 3M was living in, too, where all of a sudden people
13 like Mr. Starsiak, who had no business being in the PPE
14 distribution chains, started to claim an enormous amount of
15 connection with 3M that he didn't have.

16 All you have to do is read the transcript, which
17 is one of five calls that he had with Matthew Hise, the one
18 that Mr. Hise was scared enough to record at the very end
19 where he talks about being in regular contact with Ivan
20 Fong, where he talks about getting into the PPE business
21 because 3M needed someone like him to vet buyers like Star
22 Brands Group. And you see it's a little rich for them to be
23 claiming now to have no affiliation with the State of
24 Minnesota given that their conduct was so directed there.

25 So those are my comments. Thank you.

1 THE COURT: Mr. Ursu, in the other 3M cases that
2 you have filed elsewhere in the country, has there been a
3 challenge to specific personal jurisdiction and a ruling
4 that implicates the *Calder* effects test?

5 MR. URSU: Yeah, there have been no other personal
6 jurisdiction tests. In most other cases they have
7 involved -- the Indiana case is the one that I'm most
8 intimately involved with. That involves a defendant in Las
9 Vegas. There have been other places, so the defendants are
10 not always resident in the forum, but there have not been
11 other personal jurisdiction challenges.

12 THE COURT: And what is your view of the burden
13 that 3M has in this case at this stage of the game, that is
14 a motion for a TRO, with respect to alleging personal
15 jurisdiction?

16 MR. URSU: So we have alleged jurisdiction,
17 including personal jurisdiction, in the complaint and we
18 have filed declarations that would support the exercise of
19 personal jurisdiction over defendants here, including that
20 declarants themselves, Haley Schaffer and Ivan Fong, are
21 themselves 3M residents [sic] and that 3M itself is a 3M
22 Company here. So I think that we have satisfied whatever
23 prima facie burden we have to show that there's -- the
24 exercise of personal jurisdiction is appropriate.

25 The Court, of course, can all always assess its

1 own jurisdiction over these matters and if it turns out
2 later that it concludes that it didn't have it when it
3 thought that it did, it can always revise those findings.
4 That is, I think, my understanding of personal jurisdiction.
5 But whatever the burden is that 3M has here, I believe we
6 have satisfied.

7 THE COURT: Mr. Schupp, I would ask the same
8 question of you but perhaps I'll word it this way. Isn't it
9 true that 3M's burden at this point is a prima facie burden?
10 We could later on, for instance, conduct some discovery on
11 the issue if that was appropriate. But for purposes of a
12 TRO, isn't it true that they simply need to plead sufficient
13 facts to implicate the *Calder* effects test, even though that
14 I would agree with you that the Eighth Circuit has stated
15 that *Calder* has limited applications, although it is -- it
16 typically arises in a case that involves allegations of
17 fraud. How would you respond?

18 MR. SCHUPP: I don't think they have pled it
19 adequately to invoke the *Calder* factors. I think a lot of
20 this is not to be found in their complaint. But just for
21 purposes of argument, let's assume that they did plead it,
22 and I don't think it's sufficient. What they are saying, if
23 I understand it, is that they committed a fraud in New York
24 by referencing that they knew 3M lawyers. And just as an
25 aside, I don't know how telling people that you know

1 somebody is identity theft. But in any event, that they
2 knew 3M lawyers, that is not a fraud committed in the State
3 of Minnesota. That is not conduct committed in the State of
4 Minnesota that would invoke the *Calder* factors. That's
5 something that's going on in New York with Star Brands,
6 Inc., not in Minnesota.

7 And Mr. Ursu had said, well, the conduct with Star
8 Brands and talking about that they are affiliated with 3M
9 has an effect on 3M or an effect on 3M's trademarks and 3M
10 is in Minnesota. Well, if that's true, then every single
11 trademark case where somebody misuses a 3M trademark in any
12 state in the union would then have an effect on 3M in
13 Maplewood, Minnesota; and I dare say that that would not be
14 sufficient to confer either general or specific jurisdiction
15 over that cause of action.

16 And Mr. Ursu also said that they had a light sale
17 to Minnesota and that's just simply not true. There is no
18 allegation that Mr. Starsiak or AMK made any sales in the
19 State of Minnesota. That's nowhere to be found in the
20 complaint or the voluminous documents that they produced.
21 So I would dispute that that's an allegation in the
22 complaint, Your Honor.

23 And with respect to burden, there's also a
24 substantial burden on Mr. Starsiak and AMK having to defend
25 a lawsuit in Minnesota when they are located in Utah in

1 order to hire attorneys here and have to come here and
2 defend themselves a long distance away from their home state
3 and where they do business, particularly since Mr. Starsiak
4 is a hundred percent disabled veteran from the U.S. Armed
5 Forces. I think the Court should consider the burden on him
6 in having to litigate a case that has -- really the only
7 connection with Minnesota is that 3M is here and that we had
8 some phone calls here.

9 You know, the fact of the matter is, you know,
10 Ivan Fong could have been anywhere when he talked to him. I
11 don't know if he was in Minnesota or not. Haley Schaffer
12 says she was here in Minnesota when she talked to him, but
13 that's fortuitous at best and doesn't create sufficient
14 minimum contact to show purposeful availment, as Mr. Ursu
15 argues, of the laws of the State of Minnesota.

16 So I would say that proceeding without the
17 resolution of that issue at this point in time would be
18 extremely burdensome on Mr. Starsiak and AMK.

19 THE COURT: Mr. Ursu, any final remarks before I
20 make some comments?

21 MR. URSU: Certainly. Just to be clear, I did not
22 intend to say, and I hope I didn't say, that there were
23 sales by AMK of 3M respirators in Minnesota. That's not
24 true and I don't believe that's been alleged and that would
25 not be correct. They certainly tried to procure from 3M an

1 enormous number of respirators through the fraudulent
2 conduct that happened here where they claimed to be
3 associated with the Gates Foundation and otherwise. And
4 what they were saying out in the world involved access to
5 3M. They had regular contacts and that they were acting as
6 3M's agent. They cannot be surprised if that's what they
7 are claiming and they are making those claims based on
8 contacts with Minnesota within the forum state to be hailed
9 into court here.

10 I'll just lastly say, of course, we are not
11 relying on the effects test by itself. That's entirely true
12 that the effects alone are not sufficient. We're relying on
13 that additional conduct in bringing suit here.

14 THE COURT: All right. The Court is of the view
15 that the -- the burden on 3M to adequately allege specific
16 personal jurisdiction at this very early stage of the
17 proceedings on this very limited record has been met, but
18 the Court would like to explore further this question of
19 specific personal jurisdiction when the Court entertains the
20 motion for preliminary injunction.

21 My understanding is that 3M suggests that we
22 conduct a hearing in 14 days. Mr. Ursu, am I correct about
23 that?

24 MR. URSU: That's correct, or at least with --
25 unless there's consent, the Court order a longer period of

1 time for the temporary restraining order.

2 THE COURT: All right. Mr. Schupp, do you have
3 any views on that? Should we proceed with the hearing -- I
4 think that would have to be on July 9th then -- or would
5 your client consent to extending the entry of a temporary
6 restraining order further to allow more of a record on both
7 questions, that is personal jurisdiction and the merits of
8 the preliminary injunction issue?

9 MR. SCHUPP: We have our motion to dismiss on for
10 August 5th, Your Honor, for lack of personal jurisdiction.
11 I don't know if that makes a difference.

12 THE COURT: Well --

13 MR. SCHUPP: So I think that by -- I'm sorry.

14 THE COURT: Yes, you do. We could extend the
15 temporary restraining order until August 5th at which time we
16 could add to the calendar a motion for a preliminary
17 injunction. That would give the parties more time to
18 develop a record on personal jurisdiction. But I think
19 that's up to you. You need to consent to that.

20 MR. SCHUPP: Yeah. So as I understand what you're
21 telling me, you're going to enter the TRO?

22 THE COURT: Yes. Every other aspect of the TRO I
23 think 3M has clearly pled adequately and has a sufficient
24 record to support. Specific personal jurisdiction, while I
25 understand that the Eighth Circuit narrowly applies the

1 *Calder* effects test, I think *Calder* effects plus this record
2 is sufficient for this stage of the proceedings. That is
3 what is the *prima facie* showing 3M must make on this stage.
4 But that's not to say that the Court wouldn't entertain a
5 fuller record at the time of the preliminary injunction
6 hearing.

7 MR. SCHUPP: Okay. Since he's not doing anything
8 anyway, I have no problem extending the time period and
9 doing it all August 5th.

10 THE COURT: All right. Very good. Given that
11 it's August 5th then, the usual deadlines for briefing would
12 apply then under the rules.

13 MR. URSU: And, Your Honor, I would respectfully
14 request, if we're going to brief this for a TRO -- sorry, if
15 we're going to brief this for the preliminary injunction,
16 that we would have the opportunity to depose Mr. Starsiak on
17 the jurisdictional question and that he do a limited
18 production of documents associated with his communications
19 with others the things that are related to this period of
20 time that he was involved in this market.

21 THE COURT: Mr. Schupp, do you have any opposition
22 to that?

23 MR. SCHUPP: I don't think it's necessary. I
24 think jurisdiction -- in specific jurisdiction is -- is
25 contacts with 3M, which hopefully they know what they are.

1 THE COURT: Well, no, I think that we can develop
2 a better record, especially a record that involves both
3 parties, like a deposition or documents, to make this
4 judgment.

5 Now you, in turn, would be entitled, if you
6 believe that there was a deposition or some documents that
7 would be useful to your side, to ask for that.

8 MR. SCHUPP: You anticipated my question, Your
9 Honor. Thank you.

10 THE COURT: And do you know -- perhaps I should
11 have the parties meet and confer about that and only come
12 back if there is a concern, but I think some limited
13 discovery might be appropriate on that issue.

14 MR. URSU: And with respect, Your Honor, could we
15 also meet and confer then on a briefing schedule that would
16 permit that evidence that was collected as part of that
17 process to be part of the record?

18 THE COURT: Absolutely.

19 MR. URSU: Thank you.

20 THE COURT: So why don't I -- I will enter the TRO
21 proposed by 3M unless, Mr. Schupp, you have any argument
22 about any specific language in that proposed order.

23 MR. SCHUPP: May I take a look at it briefly?

24 THE COURT: Of course.

25 MR. SCHUPP: Paragraph 1 we need to change to

1 August 5th. Well, I don't know about paragraph 1. It says
2 that defendant is supposed to appear in front of you to show
3 cause on a preliminary injunction, so I guess that has to be
4 changed.

5 THE COURT: I will make it appropriate to what it
6 will be. Any other specific arguments?

7 MR. SCHUPP: No, Your Honor.

8 THE COURT: All right. I will enter some form of
9 that order. The parties will meet and confer. I'd like the
10 parties to get back to the Court with just a letter
11 submission in the next week about your meet and confer so
12 the Court understands the extent of any discovery that will
13 occur and the briefing schedule that you have agreed to.
14 But, Mr. Schupp, you should advise your client that the TRO
15 will likely be entered tomorrow.

16 MR. SCHUPP: Okay. Like I said, he's not doing
17 anything anyway, Your Honor, so it's -- but I'll let him
18 know.

19 THE COURT: Okay. All right. Very good.
20 Anything further today from 3M?

21 MR. URSU: No. Thank you, Your Honor.

22 THE COURT: Very good. Anything else, Mr. Schupp?

23 MR. SCHUPP: No thank you, Your Honor.

24 THE COURT: All right. Very good. The hearing is
25 adjourned.

1 MR. URSU: Thank you.

2 (Court adjourned at 4:14 p.m.)

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6 I, Carla R. Bebault, certify that the foregoing is
7 a correct transcript from the record of proceedings in the
8 above-entitled matter.

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11 Certified by: s/Carla R. Bebault
12 Carla Bebault, RMR, CRR, FCRR

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